Appendix XII.

***Vide* Answer to Question No. 367.**

Statement showing the number of persons by caste appointed during the past two years as Excise Inspectors.

Brahmin	1
Nairs	4
Other caste Hindu	1
Syriac Catholic	2
Other Christian	2

LEGISLATIVE BUSINESS.

THE TRAVANCORE COMPENSATION FOR IMPROVEMENTS BILL (*concld.*)

Clause 4. (*contd*)

PRESIDENT: Now we proceed to legislative business. The consideration of the same Bill that was before the House day before yesterday will be continued today. When the House adjourned they were discussing item No. 6 on the agenda *viz.*, the amendment by Mr. Varughese. An amendment to that amendment was allowed by the Deputy President, who was in the Chair, and discussion proceeded simultaneously on both the amendments. Well, I suppose there was no further discussion.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): The amendment was moved and seconded.

PRESIDENT: I suppose the other amendment was also moved and seconded.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, the principle of the amendment moved by Mr. Varughese and of the amendment that was moved by Mr. Thanu Pillai, is, I must, concede, logical and reasonable. It is only right that when the yield is to be valued for purposes of capitalisation for determining the amount of the compensation to be paid to the holder, the yield should be valued at the average price and not at the market rate prevailing at the time of the determination of the amount of compensation. To that extent, I for my part agree to the principle of these amendments. But the real difficulty in this matter is the difficulty of satisfactorily ascertaining the average market rate. We have no unchallengable record to show the prices which prevailed in various years. Suppose for instance we have to find out the average market rate prevailing this year; we may have to proceed on records which may be seriously challenged and may perhaps give rise to serious differences of opinion. And, it may be rather difficult to get at a market rate which is perhaps acceptable to both parties and which perhaps may be satisfactory to the Judge himself. But once we lay down that the average market prices shall be ascertained, the court is bound to accept and to follow it and he perforce has

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[Mr. Kayalam Paramesvaran Pillai.]

to judge on materials which even to himself may not be satisfactory. Therefore, perhaps, the advantage aimed at in finding out the average market price may be considerably discounted by the difficulty in ascertaining it and the uncertainty of the result. That is the reason why in this Bill, as it has been reported by the Select Committee, they have said that the yield shall be at the valued current market rate. So far as I have been following the debate, no suggestions appear to have been made as to how to find out the average market price in any manner which is beyond challenge and which would be acceptable to every body. If there had been any satisfactory suggestion, I would have been pepared to agree to that amendment. However, the attitude of the Government is that until they hear a satisfactory method suggested for ascertaining the average market price they will remain neutral.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): May I know whether under the provisions of the Land Acquisition Regulation it is not the market rate on the date of the declaration that is taken into consideration?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes, in calculating the market value of the *land*.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): May I know whether there is anything to justify a departure from that principle in this case?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): There is First of all it must be remembered that, strictly speaking, in acquisitions of land there is really a sale of land by a private party to Government. No doubt the land is being compulsorily purchased from the party, whereas, as between party and party, none is bound to sell. When Government acquire the land it is compulsorily purchased and for this compulsion a compensation of 15 percent, is given in addition.

MR. A. THANU PILLAI (*Trivandrum-Rural*): May I know whether it is not clear that while there will be only slight fluctuation so far as land is concerned, the case is different in the case of commodities?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes, perhaps. Perhaps on principle the market value of land varies from year to year, although the variation is not worth mentioning. But here we have to ascertain the compensation for improvements by capitalisation of the value of the yield and, for the purpose of determining this value, I do concede that the more equitable course would be to find out the average price prevailing for the last ten or three years or some such period. But what is the method of finding out the average prices prevailing?

MR. N. E. VARUGHESE (*Tiruvalla I*): May I know whether the member is aware that there is a list published in every Taluk Cutcherry showing the *nirak* rate of the prices of commodities?

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes, but that has not been accepted by every Court as a correct record. On a previous occasion while discussing another Bill in this House I myself had to speak against that record. But if the House is prepared to accept that record as a correct record, I am willing to accept it. It is not likely to be accepted by either party as correct. We must have some definite methods by which we can correctly arrive at the current market values. I may refer the House to the corresponding provision in the Malabar Compensation of Tenants Improvements Act, I of 1900, on which, to some extent, this Bill is based. There, what is accepted is the average price of ten years. It is that, that has to be capitalised for compensation. So, the principle contained in the amendment proposed by Mr. Varughese that ten years' average should be taken into account seems to have a precedent too.

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum—Urban*): May I know how in British parts they find it out?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I am not quite sure, but I conceive that they have got some means to collect the prices prevailing in the various markets.

This principle is accepted in Madras, on the lines of which a portion of the Regulation is drafted. So the principle of both the amendments proposed by Mr. Thanu Pillai and Mr. Varughese seems acceptable

MR. A THANU PILLAI (*Trivandrum—Rural*): Suppose the parties produce evidence?

MR KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): In regard to prices for three years, if they are asked to adduce evidence they may perhaps do it. But if you are to proceed on an average price of ten years, you may not have good evidence.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): May I know from the member the present method of assessing the value adopted by our law courts? Is it the ten years' average price or the market rate at the time of assessment that is taken into account?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I heard here that both methods are being followed.

MR. PACODE A NARAYANA PILLAI (*Vilavankod*): May I know the method adopted in the last Settlement?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) The Settlement Proclamation enacted various prices for various commodities.

PRESIDENT: Moved and seconded:—

"Recast sub-clause (e) of clause 4 as follows:—

The yield shall be valued at the average market rate which prevailed in the locality for a period of ten years previous to the time of the assessment."

to which another amendment was moved and seconded, *viz.*,

"That the figure 3 be substituted for 10."

I put the second amendment first.

The second amendment was put to vote and declared lost.

The first amendment was next put to vote and declared lost.

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MR. R. RAMAN PILLAI (*Changanachery cum Peermade II*): I demand a poll.

A poll was taken and the House divided as follows:—

AYES 13.

1 Mr. N. Abdur Rahiman Sahib
2 ,, T. K. Alexander
3 ,, V. T. Chacko
4 ,, A. S. Damodaran Asan
5 ,, M. Mahomed Haneef
6 ,, K. M. Krishnan
7 ,, N. K. Krishna Pillai
8 Mr. Puthupalli S. Krishna Pillai
9 ,, K Kunjukrishna Pillai
10 ,, P. C. Kuryan
11 ,, K. Madhavan
12 ,, K. Mahomed
13 ,, N. E. Varughese.

NOES 29.

1 Mr. A. Easwara Pillai (*Kalkulam II*)
2 ,, K. R. Elenkath
3 Miss. Hepzibah Gnanasikamony
4 Mr. M. K. Janardana Kamath
5 ,, T. S. Jayantan Nambootiri
6 ,, N. John Joseph
7 ,, T. C. Joseph
8 ,, N. Kesava Panickar
9 ,, K. P. Krishna Menon
10 ,, Pottayil S. Krishna Panickar
11 ,, T. Krishna Pillai
12 ,, M. K. Madhavan Pillai
13 ,, P. C. Narayanan Bhattatiripad
14 Mr. K. A. Narayana Pillai
15 ,, P. K. Narayana Pillai
16 Srimati T. Narayani Amma
17 Mr. G. Nilakantan
18 ,, S. Nilakanta Pillai
19 ,, Edavanatt S. Padmanabha Menon
20 ,, V. Ramakrishna Panickar
21 ,, R. Raman Pillai
22 , K. Sankaran
23 ,, R. Sivaraman Nair
24 ,, A. Thanu Pillai
25 ,, P. K. Thomas
26 ,, John Whitely Tolson
27 ,, V. K. Velappan Nair
28 ,, T. P. Velayudhan Pillai.
29 ,, T. K Velu Pillai

NEUTRALS—20.

1 Mr. K. C. Abraham
2 ,, R. Atchuthan Pillai
3 ,, C. V. Chandrasekharan
4 ,, S. Chattanatha Karayalar
5 ,, Antony George
6 ,, K. George
7 ,, J. M. Joseph
8 ,, K. C. Karunakaran
9 ,, T. T. Kesavan Sastri
10 ,, C. Kumara Das
11 , Rao Sahib Dr. N. Kunjan Pillai
12 Mr. E. K. Kunjuraman
13 ,, Pacode A. Narayana Pillai
14 ,, R. Nilakanta Pillai
15 ,, Kayalam Paramesvaran Pillai
16 ,, R. Sambasiva Aiyar
17 ,, James Simpson
18 ,, S. Thiraviam Nadar
19 ,, T. C. Thommen
20 ,, G. B. E. Truscott.

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The amendment was declared lost.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : There is another amendment to that clause. Sir, I move that in clause 4 (*e*), line 2, for the word "assessment", the words 'determination of the compensation' be substituted. It is only a formal amendment. The word 'assessment' has not been used in previous parts of the Bill. I therefore move that for the word 'assessment' the words 'determination of the compensation' be substituted.

MR. C. V. CHANDRASEKHARAN (*Ag. Director of Public Instruction*): I second it.

MR. R. RAMAN PILLAI (*Changanachery cum Peermade II*) : I accept that amendment.

PRESIDENT : The question is whether clause 4 as now amended by the House do form part of the Bill.

The motion was carried and the clause as amended was added to the Bill.

Clause 5.

MR. N. E. VARUGHESE (*Tiruvalla I*) : Sir, I move that in clause 5 for the word 'one-third', the word 'one-fourth' be substituted. The procedure adopted for calculating the annual yield of the cocoanut tree is specially mentioned in this clause. Here also I submit the holder's right is affected by the procedure adopted in the Bill. Sir, as I understand the procedure that is prevailing throughout the State, it is only one-fourth of the total nuts that is deducted as sheddings In this Bill a deduction for sheddings of both mature and immature nuts is sought to be made. Sir, the provision to make deductions in the case of matured nuts is quite unjustifiable. All the different bunches of the cocoanut tree can be classified into six classes. The first two bunches we generally call *mothakulakal*, *i. e.*, mature nuts. There is no likelihood of any sheddings from those two bunches. The next classification is, as we express it in Malayalam, *kariparuvam*, *i. e.*, suitable for the preparation of *curries*. In that class also generally two bunches are included, and there is no likelihood of any sheddings from these also. Then there is another classification known as *vitala* in Malayalam, *i. e.*, half mature, I must say. In that class of bunches also there is very little likelihood of sheddidgs. We call the fourth class as *karukkuparuvam*, *i. e.*, generally tender. We can understand it better when we call it *karikku* than when we call it tender. I may concede that in certain localities there is a likelihood of a few sheddings in this class, but I am sure it will not be more than five per cent. In those places where the trees stand near channels and other places having moisture there is very little likelihood of sheddings. In that category also there are two bunches. That makes eight bunches. Then the bunches in which there are more chances of sheddings are the last two classes. One we call in Malayalam as *vellakkaparuvam*. I can concede that in that category there may be about 25 per cent. sheddings. The last category we call as *vechanga*, that is those nuts which have

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[Mr. N. E. Varughese.]

just advanced from the flower stage. There are two bunches in that category also and we can take it that fifty per cent. of these will drop as sheddings. Supposing that in the first two bunches there are 20, in the next two another 20 and in the next two another 20, it makes a total of sixty. In the next two also there will be twenty. The last bunches may consist of about 80 nuts out of which forty may be deducted as sheddings. For the bunches above that, twenty five per cent. may be deducted. That makes a deduction of only fifty nuts. In a tree having two hundred nuts all told, there is a likelihood of only 50 to be deducted for droppings.

PRESIDENT: It is a matter of simple arithmetic, I suppose.

MR. N. E. VARUGHESE (*Tiruvalla I*): I had a paper in which I have made the calculations, but it is missing just now. According to the method adopted in the Bill, one-third of two hundred makes sixty-six and odd. So there is a difference of sixteen nuts for every tree. And at this rate when we calculate for all the trees in an extensive compound, the total number will be enormous. The proper percentage for sheddings must be scientifically ascertained and there should be no surmise or any thing of the sort.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): According to the member at what percentage should the sheddings be taken?

MR. N. E. VARUGHESE (*Tiruvalla I*) The sheddings should be calculated at 25 per cent.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Does it not vary in different places?

MR. N. E. VARUGHESE (*Tiruvalla II*): It may vary in different places to a certain extent.

MR. R. SAMBASIVA AIYAR (*Kunnatnad I*): May I know from the member whether there is any difference in the calculation of sheddings in Kuttanad where there is a large area under cocoanut cultivation?

MR. N. E. VARUGHESE (*Tiruvalla II*): There must be some variations.

What I submit is that all these circumstances should be taken into consideration in fixing the average. The difference between the shedding of mature nuts and immature nuts is very great. The report does not give the reason for fixing 33⅓ per cent. I am one who is engaged in cocoanut cultivation. I know the different localities in North Travancore. I can therefore assert boldly that 33⅓ per cent general deduction is too much.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I know whether the member is aware that the Department of Agriculture can speak with authority on the question of sheddings?

MR. N. E. VARUGHESE (*Tiruvalla I*): Sir, from the report I have not been able to find out anything. Whatever be the verdict of the Department of Agriculture, I shall stick to my view.

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MR. A. THANU PILLAI (*Trivandrum—Rural*) : Suppose the number of the most tender nuts be 100. What would be the number on the ripest bunch ?

MR. N. E. VARUGHESE (*Tiruvalla I*) : Between 40 and 50.

The Select Committee did not make any enquiries which they were at liberty to do. They have simply adopted one-third basis without any data. I cannot accept it as it is against the interests of the holders. It is against the practice now adopted in our civil courts for the last so many years. Therefore it is only proper that the current practice of 25 per cent. deduction should be maintained and the 33 1/3 per cent. as is given in the Bill should be rejected. I request my honourable friends to accept the amendment which is only fair and reasonable.

The amendment fell through for want of a seconder.

The question that clause 5 do stand part of the Bill was then put and carried and the clause was added to the Bill.

Clause 6.

MR. N. E. VARUGHESE (*Tiruvalla I*) : I beg to move the following amendment :—

Recast clause 6 as follows :

"In the case of non-bearing trees of the class mentioned in Section 4 and which have not reached the full bearing stage, the compensation payable to the holder shall be their full value."

Sir, that is the practice in this State. And that practice has been recognised in all the courts and has become substantive law. I do not find any reason in the Select Committee report to show why we should deviate from that substantive law. This clause in the Bill will lead to absurdities.

Clause 6 as proposed by the Select Committee runs as follows :—

"In the case of non-bearing trees of the classes mentioned in Section 4, the compensation payable to the holder shall be the full value in respect of pit plants or saplings planted by him if they are not more than one year old and shall be three-fourths of their full value in respect of trees which are above that age but have not reached the fruit-bearing stage."

The words "fruit-bearing stage" requires explanation. If a cocoanut tree has only one nut on it, it should not be taken as a tree to be valued at 8 1/3 years' purchase. The Bill neither excludes such tree nor includes it. It is left to the will and pleasure of the officers.

Sir, those who are engaged in cocoanut cultivation will know that when a tree commences to bear fruit it will have only one or two nuts to begin with. It will take two or three years more to arrive at the full bearing stage. So to fix three-fourths of their full value without any basis is rather anomalous. If the trees are allowed to stand for two or three years more they will fetch a higher value. That is the reason which pursuaded our courts to award the total value without any deduction. That is just and fair.

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[Mr. N. E. Varughese.]

According to the provisions contained in the Bill already passed, suppose there are only two nuts on a tree; after deducting 25 per cent. for maintenance and making another 25 per cent. reduction, for purposes of valuation, there is only one nut.

Three-fourths of that portion runs to a very small amount and when capitalized at 8 1/3 year's purchase, it will be a few chuckrums. But that tree if taken as a non-bearing tree will fetch a *mathippu vila* far in excess of the other price. The difference in that valuation and *mathippu vila* according to the Bill cannot be appreciated It is dangerous and I submit that it cannot be approved. With these words I move the amendment for the acceptance of the House.

PRESIDENT: As this amendment is not seconded this stands as dropped.

The question that clause 6 do stand part of the Bill was put to vote and carried and the clause was added to the Bill.

Clause 7.

PRESIDENT: The question is that clause 7 do form part of the Bill.

Clause 7 was added to the Bill.

Clause 8.

PRESIDENT: The question is that clause 8 do form part of the Bill.

Clause 8 was added to the Bill.

Clause 9.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I move the following amendment:

In clause 9, line 1, for the word "assessing", substitute the word "determination", and in line 5, for the word "the", occurring before "Government" substitute the word "Our".

For the sake of uniformity this amendment is necessary.

MR. R. ATCHUTHAN PILLAI (*Traffic Superintendent of Police*): I second it.

PRESIDENT: The question is that clause 9 as amended do form part of the Bill.

Clause 9 as amended was added to the Bill.

Clause 10.

PRESIDENT: The question is that clause 10 do form part of the Bill.

Clause 10 was added to the Bill.

Clause 11.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I move the following amendment:

In clause 11, line 2, for the word "payment", substitute the word "determination" and in line 5, for the word "the" occurring before "Government", substitute the word "Our".

It is only a formal amendment.

MR. R. ATCHUTHAN PILLAI (*Traffic Superintendent of Police*): I second it.

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PRESIDENT: The question is that clause 11 as amended do stand part of the Bill

Clause 11 as amended was added to the Bill.

Clause 12.

PRESIDENT: The question is that clause 12 do stand part of the Bill.

Clause 12 was added to the Bill.

Clause 13.

PRESIDENT: The question is that clause 13 do stand part of the Bill.

Clause 13 was added to the Bill.

Clause 14.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I move that in clause 14 (*a*) (i), line 2, after the word "holder", insert the words "for the recovery of the holdings".

It is only meant to make the sense clear.

MR. R. ATCHUTHAN PILLAI (*Traffic Superintendent of Police*): I second it.

The amendment was put to vote and carried.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): I move the following amendment:

For clause 14 (*a*) (ii), substitute the following:

"The holding be divided into shares and the shares allotted to the respective claimants in such a way that the value of the shares shall bear the same proportion as the shares in the value of improvements and reciprocal interests such as the value of the land, rent, michavaram, damages, or costs or other amounts, if any, due to the proprietor and mortgage money, premium, costs or other amounts, if any, due to the holder, under the same transaction."

To understand the force of that amendment, clause 14 has to be read. It runs as follows:

"14. Where in a suit or other proceeding in a civil court for the recovery of a holding, compensation is payable and the proprietor of the holding is also entitled to any amount as jenmikoor, the court may pass a decree or order, as the case may be, in the following terms, *viz.*—

(*a*) that on the application of the proprietor either,—

(i) the holding be recovered on payment of the compensation and other amounts, if any, due to the holder or,

(ii) the holder pay to the proprietor the amount of the jenmikoor in lieu of all the rights of the proprietor in the holding subject to the condition that if the holder so elects, the holding shall be divided in the proportion of the amount of the compensation and the amount of jenmikoor and the proportionate share of the holding be delivered to the proprietor and

(*b*) that if the proprietor does not take steps within such time as the court considers reasonable for pursuing either of the above remedies, the holding may, on the application of the holder, be sold and the sale proceeds divided between the proprietor and the holder in the proportion of the amount of jenmikoor and the amount of compensation"

It is the last portion that seems unjustifiable. When a particula holding is improved by a holder of the property, rights of a reciprocal

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[Mr. P. K. Narayana Pillai.]

nature arise. The proprietor of the holding would be entitled to the land and the holder to the value of the improvements. The holder would not be entitled to the whole value of improvements in some cases. In many cases, for example, when the trees have reached the fruit-bearing stage, the holder is entitled to three-fourths of the value of the improvements as estimated in the provisions of this Bill. Whatever be the nature of the improvement made on the property, the proprietor, in the case of mortgages, will be entitled to the equity of redemption and in the case of lease, entitled to the reversion of the holding and so forth. There are rights both for the holder and the proprietor and therefore it is suggested that their rights should be divided in the proportion of the various interests, *viz.*, the interest belonging to the proprietor should bear a proportion to the interest belonging to the holder. There is no such provision in the present Bill. Hence I move that the property may be partitioned on lines of reciprocal interests to do justice to both the parties. That is the underlying principle of the amendment.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*) : I second it.

PRESIDENT : The House will now adjourn and meet again at 2 P. M.

The House adjourned for lunch at 1 P. M. and met again at 2 P. M., with the Deputy President in the chair.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*) : I support the amendment moved by my friend Mr. P. K. Narayana Pillai. I have myself tabled an amendment to the same clause and since both the amendments are substantially the same, I think I may say what I have to say in support of this amendment.

DEPUTY PRESIDENT : You have got that right even if you have tabled no amendments.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*) : Clause 14 proposed in the Bill is highly injurious to the interest of the proprietor. Ordinarily the proprietor is entitled to redeem the property on payment of the value of the compensation and other moneys, if any, as are found due to the holder, within the period of limitation prescribed under the law. The time allowed for a proprietor to redeem the property is 12 years. Now it is proposed that this valuable right of the proprietor should be taken away from him, simply because of the fact that he is not at present in a position to pay in cash the amount due to the holder and he is asked to forego all his interest in the holding in lieu of the one-fourth share of the full amount of the value of improvements. This one-fourth share of the value of compensation might be a very trifling amount in certain cases, and in certain other cases it may be something substantial. If we allow this sub-clause to come in, it will work highly injuriously to the interest of the proprietor. We can imagine thousand and one cases in which properties have been let out for improvement without taking into account the value of the land at the time of letting out. Now we are proposing that all those rights of the proprietor should

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be extinguished simply for the sake of the one-fourth share of the value of improvements. Take the case of a property, 5 acres in extent, given on simple lease, which at the time of the lease is fully planted up and which has a few trees which have been subsequently planted by the lessee also. He is entitled to the value of his improvement and it may come to a few rupees, say Rs. 100, and the proprietor's share of the value would come to Rs. 25. If this clause is allowed to stand, it would mean that the proprietor whose holding might be valued at Rs. 5,000 originally has to forego his interest in the property by receiving Rs. 25 only. This, I submit, Sir, is highly inequitable. The proprietor's right in the holding is his right to the equity of redemption, arrears of rent and *michavarom*, if any, and costs. All these rights he is now asked to forego simply because he is not in a position to pay the holder all at once. The holder might originally have been put in possession of the property under different conditions. It might either be under a mortgage or a simple lease even without any premium. In all these cases, this sub-clause compels him to forego all his interests for the sake of the one-fourth share in the value of improvements. Even this is denied to him if the holder elects to give him only a portion of the holding divided in the proportion of the value of improvements and the *jenmikoor*. What the present amendment proposes is that in case the proprietor is not in a position to pay and redeem, he will have the right to have the holding divided in such a way that the interests of both the parties will be taken into account and the division made in such proportion as their respective interests would bear. Viewing from the standpoint of the tenant himself, the amendment now proposed could not work any hardship. If he has effected valuable improvements on the property, he is entitled to retain the property and enjoy the improvements that he has effected over and above the trees that were standing on the property at the time of demise. He is not asked to forego his right to the improvement or the term in the lease. It is proposed that the holder may be given full proprietory rights over the share of the property that is allowed to him. So I submit that if the proposed amendment is not acceptable to the House, it would be far better to have the whole clause deleted rather than having the present clause in the Bill. So I support the amendment moved by Mr. P. K. Narayana Pillai.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I am not prepared either to accept or oppose the amendment. I leave it to the House to do so.

DEPUTY PRESIDENT: But a member can speak only when he wants either to support or oppose an amendment.

MR. A. THANU PILLAI (*Trivandrum—Rural*): I wish to know whether the member in charge of the Bill is prepared to have the whole clause deleted.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Clause 14 (*b*) may be deleted and not the whole clause.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose this amendment. I shall not deal at length with the criticism made by Mr. Krishna Panickar against the Bill as it stands. If the amendment had been to delete part (*a*) of the clause, I would not have minded very much. But I find great difficulty in accepting the amendment that is moved by Mr. P. K. Narayana Pillai. It must be remembered that ordinarily a decree is passed for the recovery of property on payment of compensation to the holder. According to the amendment, the proprietor has no obligation to pay the compensation amount to the holder. What it proposes is that on an application to the court, the property shall be divided in the proportion of the rights of the various parties. Now, the holder has no right over the land; his right is to get the money. Why does not the proprietor pay it? There is no justification for the proprietor not to pay it. It must be assumed that when the court has made a valuation, it is a fair valuation. It is therefore fair that the proprietor should be called upon to offer that amount to the holder. When the proprietor has no cash, why should he be allowed to cut up the land and take a portion of it in lieu of the share of compensation due to him. There is no equity or reasoning for that procedure. Secondly, how should the property be divided.

> "..... .....in such a way that the value of the shares shall bear the same proportion as the shares in the value of improvements and reciprocal interests such as the value of the land, rent....."?

So the value of the land must be assessed. It is a very uncertain procedure and will lead us no where.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Can it not be done as in the case of value of improvements?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No such rules are laid down for valuing land as distinguished from improvements.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Are there not sufficient rules in existence?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No, we have not laid down any rules.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): What about the original right of the proprietor?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): He must pay the money and recover the land.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Suppose he does not pay?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Leave it as it is, and omit clause (*a*). But I seriously object to this amendment.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Should not his share of the holding have a value in the market?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes. But why should the land be divided?

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If the proprietor is not able to pay the amount he may compel the holder to cut up the land. Why should we *compel* the holder to cut up the land? That seems to be one-sided. We must be fair to both sides. This amendment is quite unacceptable. If the House is not agreeable to the clause I am willing to have it deleted. Then we will be only bringing back the existing state of law.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): If the Chair would allow and if the House would permit me, I am prepared to the deletion of the whole clause.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): When we put clause 14, the House can do it.

DEPUTY PRESIDENT: When the clause is put, those who want to oppose may vote against it. At the same time if Mr. Raman Pillai, as the mover of the Bill, wants that permission, I have no objection to grant it.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I request the Chair to permit me to move an amendment to that effect.

DEPUTY PRESIDENT: Mr. Raman Pillai has asked for permission to move an amendment *viz.*, that the whole clause be omitted. That is how I understand.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Yes Sir.

DEPUTY PRESIDENT: I am prepared to be indulgent to the member and I give him permission to move the amendment.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Sir, I move that clause 14 be omitted. The only reason is that I am convinced of the inequity of the clause on hearing the learned Law Member. The proprietor should pay the value of improvements to the holder is the rule now prevailing in our State. I cannot understand why that rule should be altered. It will do gross injustice to holders in general. Honourable members day before yesterday expressed that the holders are very poor. Although I do not accept that position, it is justifiable that the clause is deleted and the proprietor is asked to pay all the amounts due to the holder according to the practice now obtaining in our State. So I move that clause 14 be deleted.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): I second it.

MR. N. E. VARUGHESE (*Tiruvalla I*): I oppose the deletion of the clause. I believe the inclusion of that clause was made after much consideration and the retention of the clause would be advantageous both in the interest of the holder and the proprietor. Generally we find, Sir the proprietor files a suit for recovery of the holding. He is given a decree asking to pay a very large amount as compensation without fixing any period for the recovery of the land. According to the provisions in the Limitation Regulation, such a decree-holder can recover the land within 12 years from the date of the decree, after depositing the necessary amount of compensation in the court. On account of the

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uncertainty as to when the proprietor may redeem the property it very often happens that the holders neglect the property and thereby the value of the property decreases. Supposing for example that the value of improvements is fixed at Rs. 5,000 by the court. After three or four years, when the proprietor executes the decree, it will be found that the value of the property has gone down considerably. So to meet this hardship the clause provides that the proprietor should get his share and the holder should get his share. Such a provision is absolutely necessary both in the interest of the holder and the proprietor. Now at this last moment, the mover has sought permission to delete the provision. No doubt the House can permit it and the Chair can permit it. But at the fag end of the Session, to call upon the House to allow the mover for the deletion of this clause is not proper.

DEPUTY PRESIDENT: Mr. Varughese, I want just to mention this. You may talk on this amendment according to your likes. But that the permission was given at the fag end of the Session is not a point which arises. Once permission has been given it has been given. You may proceed with your speech.

MR. N. E. VARUGHESE (*Tiruvalla I*): My observation was simply to bring to the notice of the House that there was not sufficient notice to think as to the effect of the deletion of the clause.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Does not the member see that there is an amendment in the notice of amendments to that effect *viz.*, that clause 14 be deleted in *toto*.

DEPUTY PRESIDENT: Mr. Raman Pillai says that Mr. Varughese and other members had notice of such an amendment. And I do find that there is such an amendment, *viz.*, amendment No 17 by Mr. A. Thanu Pillai.

MR. N. E. VARUGHESE (*Tiruvalla I*): I did not see that.

So on the whole, taking the Bill as it is, I think it is quite appropriate that there should be a provision like clause 14 in the Bill. With these words I oppose the amendment for the deletion of this clause.

DEPUTY PRESIDENT: I shall now put the question to the vote of the House.

The motion that the whole of clause 14 be deleted was put to vote and carried.

Clause 14 was deleted.

Clause 15.

DEPUTY PRESIDENT: The question is whether clause 15 stands part of the Bill.

The question that clause 15 do stand part of the Bill was put to vote and carried and the clause added to the Bill.

DEPUTY PRESIDENT: Clause 15 shall be re-numbered as clause 14.

The question that what is printed as clause 15 be numbered as clause 14 was put to vote and carried.

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New clause 16.

MR. N. E. VARUGHESE (*Tiruvalla I*) Sir, I move that a new clause be added to the Bill and numbered as clause 15.

My amendment consists of two parts. They are :—

"(1) The provisions of this Regulation shall not apply to suits and proceedings pending in any of the civil courts of the State, prior to the passing of this Regulation.

(2) Inspite of anything appearing contrary in this Regulation, the vested rights, if any, of the holder or proprietor shall remain unaffected.

I will first speak upon the first part. Sir, we find that certain new procedures are being proposed to be introduced into the Civil Procedure Code. Certain new rules are being passed. Clause 10 of the Bill says :

" Subject to the provisions of the Code of Civil Procedure, 1100, relating to pleadings where a holder claims compensation in any suit or proceeding before a civil court, but has not already specified particulars of the improvements, the court may, and if the opposite party moves for it, the court shall, order the holder to specify the particulars of the improvements such as the various items, their value as estimated by him and other material particulars which would enable the court to determine the compensation. The opposite party shall be called upon to answer the statement of particulars so filed."

What I want to bring to the notice of the House is that unless my amendment for the addition of a separate clause is passed, it may be taken that all the provisions in this Bill will apply to suits which are already pending in the courts.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): The amendment now proposed by Mr. Varughese is to add a new clause as clause 15. That clause consists of two parts. In the second part it is stated that :

" Inspite of anything appearing contrary in this Regulation, the vested rights, if any, of the holder or the proprietor shall remain unaffected."

That goes to the very root of the provisions contained in this Bill.

DEPUTY PRESIDENT: We are now only at the first part of the amendment.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): I heard Mr. Varughese speaking on both parts.

MR. N. E. VARUGHESE (*Tiruvalla I*): At the very out-set I said that I am moving only the first part. Sir, as it is, suits in our courts will be in different stages. In one case the party may have just filed a suit, and summons may not have been issued ; in another case we will find that a written statement has been filed. In a third case we may find that the issues have been settled and so on. Therefore suits pending will be in different stages. It may be that the whole evidence is adduced and the suit is pending for arguments. Until a suit is finally decided it is supposed to be a pending suit. It may happen that before final judgment the value of improvement might have been ascertained by issuing a Commission and after so many other proceedings. That being the case it will not be proper to apply the provisions of this Bill to pending suits. The provision given in Section 10 is that, when a

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holder claims compensation in any suit and he has not already specified particulars of improvement, the court has power to ask him to state all the necessary particulars. And upon this the opposite party may be called upon to speak.

So, practically by virtue of clause 10, the court can re-open all the proceedings that were conducted in a suit. That should not be. That will create a lot of trouble and difficulty to the parties. So, to avert all these, my submission is that there should be a provision in the Bill to say that this law shall not apply to suits pending prior to the passing of this Regulation.

MR. A. THANU PILLAI (*Trivandrum—Rural*): Is there not a stage at which the party can be asked to furnish costs?

MR. N. E. VARUGHESE (*Tiruvalla I*): According to clause 10, the court is bound to get an answer to the statement of particulars filed by a party. It may be that a case has arrived at the hearing stage after, say, 10 years. By this clause the parties will have to go over all the ground from the very beginning. This will be very injurious to the party. I shall leave it to more eminent jurists than myself for elucidation. As I understand it, all legal enactments should have only prospective application and not retrospective application. By the inclusion of clause 10. I think that this Bill is expected to have retrospective effect.

DEPUTY PRESIDENT: Respecting customs and existing contracts does not make a law retrospective.

MR. N. E. VARUGHESE (*Tiruvalla I*): My argument is that the existence of this clause is likely to be used as an argument that the law should be retrospective. If the law is sought to be retrospective, I ask the House whether such a provision should be included? But I leave it to more eminent jurists than myself to say whether it is so. If they agree with me I think I am entitled to their support also.

MR. ANTONY GEORGE (*Nominated*): I support the amendment moved by Mr. Varughese.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Sir, I oppose it.

The amendment was put to vote and declared lost.

MR. N. E. VARUGHESE (*Tiruvalla I*): Sir, I do not move the second part.

PREAMBLE.

The question that the Preamble do stand part of the Bill was put and carried.

The Preamble was added to the Bill.

TITLE.

The question that the Title do stand part of the Bill was put and carried.

The Title was added to the Bill.

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MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Sir, now that the second reading of the Bill is over, I request the permission of the Chair to allow me to move the third reading of the Bill.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I think, Sir, that I should have some time to study whether any formal amendments are necessary. Of course, the Chair has got the power to waive the Standing Order.

DEPUTY PRESIDENT: An application has been made that permission should be given to pass the Bill in the third stage. The Law Member wants time to consider this Bill once again and to see if any verbal and other changes may have to be effected. It is very reasonable. Further, I do not think that this Bill requires any artificial aid in the matter of taking it up for the third stage. Therefore, the permission sought for cannot be granted.

THE TRAVANCORE HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

MR. P. CHIDAMBARAM PILLAI (*Commerce and Industry, South*): Sir, I beg to move that the Travancore Hindu Law of Inheritance (Amendment) Bill as amended and passed by the Sri Chitra State Council be taken up for consideration.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) I may say, Sir, that the proper form will be that amendments to the Travancore Hindu Law of Inheritance Amendment Bill as amended, be taken for consideration.

MR. P. CHIDAMBARAM PILLAI (*Commerce and Industry, South*): Sir, I move that the amendments to the Travancore Hindu Law of Inheritance (Amendment) Bill as amended by the Sri Chitra State Council, be taken up for consideration.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I second it.

DEPUTY PRESIDENT: Mr. Chidambaram Pillai may move the amendments formally.

MR. P. CHIDAMBARAM PILLAI (*Commerce and Industry, South*): Sir, I move that the words 'or who died intestate' added after the words 'dying intestate' in the title of the Bill be accepted.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I second it.

The question that the amendment be accepted was put and carried.

MR. P. CHIDAMBARAM PILLAI (*Commerce and Industry, South*): I move that the words 'or who died intestate' added after the words 'dying intestate' in the Preamble of the Bill be accepted.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I second it.

The question that the amendment be accepted was put and carried.

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